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No. 82-1645

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

JULIUS GOLDMAN'S EGG CITY,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

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REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Petitioner Julius Goldman's Egg City takes exception to the arguments at page 3 of the Memorandum in Opposition to the effect that the issue presented is solely a challenge to the application of regulatory standards to particular facts and that "[t]here is no occasion for this Court to decide an issue of such limited significance."

The payment of indemnities for animals destroyed by order of the Secretary of Agriculture to prevent the spread of disease is a recurring issue of considerable importance, particularly to ranchers but also to the public generally. Prompt destruction of diseased animals requires the cooperation of ranchers which can be achieved only if they know that they will be fairly compensated in accordance with published regulations tailored by the Sec-

retary of Agriculture for application to their particular animals and agricultural enterprises. Thus, the integrity of the compensatory system is the key to the public cooperation which is essential to the success of the program. In the present case, the Secretary's prescribed and published two-tiered system of indemnification—(1) replacement cost, plus (2) lost income during the repopulation period—was not applied to Egg City, the ranch that accounted for more than 30% of the poultry destroyed under the program. The Court below permitted the Department of Agriculture to ignore the Secretary's published standards and concluded that Egg City had received "adequate compensation" and had failed to establish that it had actually received "inadequate compensation."

The Court below plainly misconceived the deference to be accorded administrative decisions. The issue in this case does not involve the question whether the courts should defer to the Agriculture Department in the construction of a statute it administers. The Secretary of Agriculture undoubtedly has wide discretion in formulating indemnification standards under the statute. Once having established such standards, however, he has no discretion to ignore them. Yet, the Court below "deferred" to the Secretary's efforts to justify the indemnity paid to Egg City on a basis other than the two-tiered indemnification standard he promulgated.

The Petition thus presents a significant and continuing issue, namely, whether a rancher is entitled to indemnification for destruction of his animals on the basis of strict adherence to standards promulgated by the Secretary of Agriculture. Under the decision below, ranchers are without a remedy if the Secretary of Agriculture departs from his own standards and a Court concludes that there was "a rational basis for the Secretary's determination," because the compensation awarded, though inconsistent with the promulgated standards, seems "adequate" to the Court.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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